IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

NO. [redacted] 19

HARRIETT LOUISE ADDERELY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

—vs

THE STATE OF FLORIDA,

Respondent.

Response to Petition for a Writ of Certiorari to the District Court of Appeal, First District, State of Florida

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PRELIMINARY STATEMENT

The petition for writ of certiorari supports the allegations of facts by references to those court opinions found in its appendix. The state likewise will support statements of fact made in this response by appropriate references to the same opinions relied on by petitioners. For purposes of saving printing costs, such references will be to the appendix of petitioners' petition.

OPINION BELOW

Respondent concedes that the pertinent opinion herein sought to be reviewed is that found in 175 So.2d 249, and that such opinion is accurately duplicated in the appendix of petitioners' petition.

QUESTION PRESENTED

WHETHER SECTION 821.18, FLORIDA STATUTES, BY VIRTUE OF ITS APPLICATION TO PETITIONERS IN THIS CASE, CONSTITUTES A VIOLATION OF FREE SPEECH, ASSEMBLY, PETITION, DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS ASSURED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

JURISDICTION

Respondent concedes that appropriate jurisdiction to entertain this proceeding is vested in this court pursuant to 28 U.S.C., 1257.

STATEMENT OF THE CASE

Petitioners were each charged with and adjudged guilty, after jury verdicts of conviction in the County Judge's Court of Leon County, of having committed a "trespass with malicious and mischievous intent upon . . . property owned by Leon County, a political subdivision of the State of Florida . . . being located at the Leon County jail; contrary to Section 821.18, Florida Statutes" (R-2-63, odd number pages; 67).

Thereafter, the Circuit Court in and for Leon County, Florida, affirmed the judgments and sentences of conviction of the County Judge's Court in and for Leon County, Florida (R 67-73).

Whereupon, a petition for a common law writ of certiorari was sought in the District Court of Appeal, First District of Florida. The District Court in a decision reported at 175 So. 2d 249 denied said petition as well as petition for rehearing.

STATEMENT OF THE FACTS

Rather than accept petitioners' "Summary of Evidence" purporting to follow the facts as set forth in the opinion of the Circuit Court, it is respectfully submitted that a more nearly objective statement thereof may be found within the confines of the courts order (R 67-73, A 1-3).

To the extent that said recitation may not be so considered and if it should become necessary in respondent's

discussion of the argument, appropriate corrections and/or additions thereto will be made.

ARGUMENT

Respondent will endeavor to demonstrate to this tribunal that there is no conflict between the decision below and the cases cited by petitioners in support of that proposition.

1.) Petitioners rely heavily on the cases of *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed. 2d 697, *Cox v. Louisiana*, 1965, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471, and *Cox v. Louisiana*, 1965, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487, in support of their contention that the constitutional rights of free speech, assembly and petition were abridged.

Here petitioners' complain that because of their rights under the First and Fourteenth Amendments to the federal constitution they either could not, or should not, have been arrested and convicted for violating Section 821.18, Florida Statutes. To use the *Edwards* case, supra, they purport to recite a series of Florida laws, both constitutional and statutory, a reference to which reveals what some might consider to be discriminatory excesses. It is interesting to note that at this writing they stand as valid law, petitioners' protestations to the contrary notwithstanding. In addition to this, they cite us to a lofty compilation of independent views by the Florida Advisory Committee to the United States Commission on Civil Rights. The objectivity which is to be found in this noble

effort is at least open to some question but, even if it is accepted as represented, one must wonder at just where it fits into the matters properly before this Court for determination.

Petitioners have failed to demonstrate how the void for vagueness quote from *Edwards*, supra, creates a conflict with the present case.

Respondent admits that petitioners' analysis of (1) through (3) on page eleven of petitioners' brief likens the *Cox* cases, supra, unto the present case, but here the comparison ends. In the present case, petitioners proceeded within one to two feet of the jail entrance (R 99, 100) while in the *Cox* cases, supra, the demonstration took place across the street over 100 feet from the building in question.

Cox was the only person arrested and the arrest took place the next day. In the case at bar, Sheriff Joyce's testimony is replete with sworn assurances that no one on the public sidewalks or any other areas customarily used by the pedestrian public was either arrested or molested. Indeed, the very fact that the demonstrators were not arrested on their way to the jail is at least evidence of the fact that the City of Tallahassee, the County of Leon and the State of Florida are well aware that public thoroughfares are free to be used by persons seeking to air grievances.

That the demonstrators stopped just short of entering the jail is quite different from staying across the street as was done in the *Cox* cases, 13 L.Ed.2d 477. This in no way interferred with the normal operation of the courthouse. In the instant case, Deputy Sheriff Dawkins testified the operator of a service truck was prevented from leaving in his truck (R 147).

In the *Cox*, cases, supra, it appears there was testimony that police officials gave permission and then withdrew the permission to congregate. Sheriff Joyce's testimony in this case reveals that no such tacit permission was given (R 126-132). It appears that the sheriff attempted to have the demonstrators stop their trespass as soon as he inquired in the jail and surveyed the situation.

Petitioners contend in any case that their activities in protesting what they considered to be illegal segregation in the jail proper as well as other facilities under the law and policy of the State of Florida did not constitute a malicious and mischievous intent. We may suppose that this is based upon the assumption that since their purpose was noble and since many judicial decisions have indeed on specific occasions (*ad hoc* basis) seemed to vouchsafe rights assured them to do so under the First and Fourteenth Amendments, that their actions here in these circumstances simply could not be challenged or denied. They add to this the fact that their demonstration was not intended to be anything but peaceful, that they had no intent to damage propery, and that they obeyed all *reasonable* requests of the police. The record in this case militates against at least some of these contentions. The very fact that they selected the county property

immediately adjacent to the jail proper clearly shows that their purpose was not simply to protest social wrongs or indeed laws which they felt were incorrect. Their purpose had to be, by virtue of the aforesaid, the aggravation of a situation (prior arrests of demonstrators) which the courts of the land stood ready to correct in an orderly fashion. Surely the location of the county jail itself as well clearly shows that their demonstration was not calculated to reach either the hearts or souls of any respectable portion of the citizenry. Indeed but for the tradesmen and other individuals having specific business in the county jail, it is doubtful that their protest could have reached anyone other than the custodial personnel and the prisoners. In this regard, we observe that there is almost total doubt that any of the people then confined in the county jail were there for any purpose other than criminal charges (R 137, 138).

2.) Respondent vigorously contends that the line of cases decided by this Court since the enactment of the 1964 Civil Rights Act does control the present case. A similar conviction today would stand or fall regardless of the enactment of said act. In *Hamm v. City of Rock Hill*, 1964, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed. 2d 300 the trespass convictions resulted from demonstrations concerning places of public accomodation. Certainly a jail is not a place of public accomodation. We agree that the testimony reflects that petitioners sought to be arrested but fail to see how this could be considered seeking admittance to any place of public accomodation covered by the 1964 Civil Rights Act.

3.) It is noted that the majority of the cases cited in support of the proposition that petty criminal statutes were used to interfer with the constitutional rights of minorities were cases that would now be covered by the 1964 Civil Rights Act. Respondent has demonstrated how this case differs from those situations. The *Cox* cases, supra, have also been distinguished from the case at bar.

4.) Petitioners contend that the convictions in the present case are based on a total lack of relevant evidence as was found in *Garner v. Louisiana,* 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 2d 207.

The question of whether petitioners' motives made their intrusion on county property an excusable or legally sufficient one is tightly intertwined in their entire argument rather than in any given portion thereof. Suffice it to say that if this Court should determine, after a full review of the record, that petitioners had an unbridled right to air their protests in the manner in which the record reflects they did, then of course the conviction cannot stand.

We agree that the only trespass was that upon the county property adjacent to the county jail proper. None of petitioners invaded the jail or any of its out-buildings. It seems clear that the trespass was committed entirely upon access routes and the adjacent lawns, approaches, walkways and other proximate areas.

Petitioners urge that the record fails to reveal whether the areas discused above were restricted from public use at any or all times and indeed urge that no signs limiting or prohibiting the public's use thereof are to be found.

We concede there were no signs of that nature but the record is quite clear and indeed uncontroverted that when Sheriff Joyce announced his decision that petitioners must quit their trespass (R. 119, 120, 122, 129, 132, 134), they then had graphic evidence of a present restriction more than adequate to meet their present complaint in that regard.

We might observe in passing that we have never understood that it is necessary to read or make known the specific provisions of any given ordinance, law or regulation under which a police officer may make an arrest. While it may be correct to say that the property upon which petitioners conducted their alleged protest was open to the public, it is impossible to view it within those narrow confines without at the same time considering the circumstances above discussed, to-wit: their adament refusal to quit the county property after notice by the sheriff that their failure to do so would result in their arrest and prosecution for trespass.

Next the complaint seems to be that because of the language of the statute, the state failed to establish, in accord with certain definitions which petitioners urge, that this trespass; if such it was, was committed with a "malicious and mischievous" intent. Throughout their argument petitioners seem to refer to the common law and the occasions on which malicious and mischievous intent may have found its way into prosecutions brought thereunder. Careful research has failed to disclose any such genesis in this legislation. The same research had disclosed at least as many cases from foreign jurisdictions in support of a conclusion that malicious and mischievous means a good bit less than that which petitioners urge it must mean.

Some of them are *Springer v. State*, 224 Ind. 241, 66 N.E.2d 529; *Barber v. State*, 199 Ind. 146, 155 N.E. 819, 820.

The above, when coupled with at least one of the acceptable definitions thereof to be found in *Webster's New International Dictionary of the English Language*, Second Edition, Unabridged, leaves the matter in the posture of being at least as acceptable as the definitions urged by petitioners.

Let it be urged that this is no more than sematic evasion respondent contends that while words may differ in some respects, it would seem quite correct to assume that maliciously and mischievously mean at least the intentional doing of an act (in this case trespass) without just cause or excuse. That they may encompass more is perhaps also true. That it need not encompass more is undeniable.

Quite apart from the above and to the extent that petitioners urge that public property is at their unbridled disposal as a forum to air grievances, it is respectfully submitted that the federal law specifically prohibits such activity in and about the region of the Supreme Court of the United States. Section 13k of Title 40 of United States Code reads as follows:

"§ 13k. *Same; parades or assemblages; display of flags*

It shall be unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement. Aug. 18, 1949, c. 479, § 6, 63 Stat. 617"

To like general effect is Section 401 of Title 18 of the United States Code which addresses itself to the misbehavior of any person in the presence of a court of the United States or so near thereto as to obstruct the administration of justice.

By analogy, may it not be fairly concluded that if the quiet processes of federal judicial labors may not be abridged by activities such as those involved here, surely the supercharged atmosphere of a county penal institution should remain at least as insulated therefrom. We submit that objectivity commands an affirmative answer.

CONCLUSION

Wherefore, it is concluded that not only was there no violation of free speech, assembly, petition, due process of law and equal protection of the laws assured by the fourteenth amendment, but that in fact the issues raised by the petition for writ of certiorari did not lie within the broad scope of reversible error.

WHEREFORE, this Court is respectfully requested to deny the petition for writ of certiorari.

Respectfully submitted,

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Assistant Attorney General
Counsel for Respondent.

PROOF OF SERVICE

I HEREBY CERTIFY that copies of the above and foregoing Response to Petition for Writ of Certiorari to the District Court of Appeal, First District of the State of Florida have been forwarded by mail this ..... day of January, 1966, to the following as members of counsel for petitioners:

Honorable Richard Yale Feder, 250 NE 17 Terrace, Miami, Florida, 33131, Honorable Tobias Simmon, c/o Florida Civil Liberties Union, 223 SE 1st Street, Miami, Florida, 33131, Honorable Herbert Heiken, c/o Florida Civil Liberties Union, 223 S.E. 1st Street, Miami, Florida, 33131, Honorable Joseph C. Segor, 311 Lincoln Road, Miami Beach, Florida, 33139, Honorable Irma Robbins Feder, 110 N. Hibiscus Drive, Miami Beach, Florida, 33139.

Of Counsel for Respondent